ATTORNEY FOR APPELLANT:

MONTY B. ARVIN
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BART BELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A04-0609-CR-519
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0504-FB-00089

February 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Bart Bell appeals his eight-year sentence for robbery as a Class C felony, arguing that it is inappropriate in light of the nature of his offense and his character. Finding that Bell's sentence is not inappropriate, we affirm the decision of the trial court.

Facts and Procedural History

The following facts are taken from this Court's opinion in Bell's first appeal in this cause:

> Shortly before 6:00 p.m. on April 16, 2005, Patricia Speller was working as a cashier at a Low Bob's store in Kokomo. Speller was behind the counter when Bell came into the store. Bell was wearing a green shirt, "like a sweatshirt," blue jeans, a hat and glasses. The glasses were taped on the left side with white tape. Bell asked for blunt wraps, which are rolling papers. Speller told him they did not carry those but they did have something similar. Bell then removed a plastic chain, which was blocking the entrance to the cashier area, and began walking behind the counter. Bell told Speller that he did not want to hurt her, and she should "give [him] the money." Speller went to the cash register, and Bell repeated that "he didn't want to hurt [her], just give [him] the money[.]" Speller noticed that Bell was cupping his hand around something "shiny." Speller "couldn't tell what it was," but thought the object in Bell's hand was a knife. Bell, however, never threatened to cut or stab Speller and never told Speller he had a knife.
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> The money from the cash register was organized in a specific system: four tens were folded in half, with the rest of the tens lying on top; fives were kept "in a bundle of a hundred and . . . paper clipped"; and ones were "paper clipped in twenty-fives." Speller gathered the money and handed it to Bell. Bell then ran out of the store. Speller saw Bell run south, past the store's drive-through window. Speller then activated the store's alarm. Someone from the police department telephoned Low Bob's upon receiving the alarm signal, and Speller gave the person a description of Bell and the direction in which Bell was running. Soon thereafter, police officers arrived at the store, and Speller again gave them a description of Bell.
>
> Officer Craig Musgrave apprehended Bell after observing Bell running southeast. Officer Musgrave "[l]ocated a large sum of money in

> [Bell's] left pocket." Bell was wearing a hat and had a pair of glasses in his pocket. Approximately ten or fifteen minutes later, police officers brought Bell back to the store and asked Speller if she could identify him. Speller, however, could not identify Bell as the person who robbed the store because she was inside the store, "behind the window," and Bell was "inside the car[.]" The police officers took Bell out of the police car, but "he didn't have his glasses on and he didn't have [a] green shirt on." At first, Speller "wasn't sure" if Bell was the man who robbed the store because he was not wearing glasses or a green shirt. The police officers then "put the glasses back on him and that's when . . . [Speller] identified him." A police officer also showed Speller some cash, which was bundled in the same manner as the cash from the store. The officer brought back $400, and a later count of the cash register revealed that it was missing $401.
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> Eric Wright lived "about a block or so" from Low Bob's. The afternoon of the robbery, Wright saw a man running south, across his yard. Wright "didn't get a good look at his face" but saw that the man was wearing a dark sweatshirt and a hat. The next afternoon, Wright found a steak knife in his driveway. Wright gave the knife to Speller, who turned it in to the police. Wright neither identified Bell at trial nor testified that he saw the man who ran across his yard drop or discard an object.
>
> On April 19, 2005, the State charged Bell with robbery, as a class B felony.[1] A jury found Bell guilty as charged following a trial on July 5 and 6, 2005.

Bell v. State, No. 34A02-0508-CR-790, slip op. at 2-4 (Ind. Ct. App. May 18, 2006) (internal citations omitted); Appellant's App. p. 105-07.

In sentencing Bell, the trial court identified two aggravating circumstances: "Bell's [twenty-eight] prior adult convictions, [five][2] of which are felonies" and the fact

[1] Ind. Code § 35-42-5-1.

[2] The first time the trial court sentenced Bell in the instant cause, it stated that Bell had five prior felony convictions. As indicated later in this opinion, the second time the trial court sentenced Bell, it stated that Bell has six prior felony convictions. It appears from the pre-sentence investigation report that Bell may actually have seven prior felony convictions. *See* Appellant's App. p. 80-84. Nonetheless, because the parties seem to agree that Bell has six prior felony convictions and the pre-sentence investigation report is not entirely clear on the point, we will proceed as though Bell has six prior felony convictions.

that Bell was on probation under four different cause numbers when he committed the instant offense. Appellant's App. p. 137. The trial court found no mitigating circumstances. Finally, the trial court stated: "[T]he Court of Appeals and our Supreme Court have said the maximum sentence is to be reserved for the most heinous of the circumstances and characteristics of an individual who commits a felony of a certain level. I don't think that the nature of this offense rises to that level." *Id*. at 137-38. The trial court sentenced Bell to a prison term of fifteen years, five years less than the maximum sentence of twenty years for a Class B felony. *See* Ind. Code § 35-50-2-5.

On appeal, another panel of this Court reversed Bell's conviction for robbery as a Class B felony, finding that the evidence was insufficient to prove that Bell committed robbery while armed with a deadly weapon. *Bell*, slip op. at 9; Appellant's App. p. 112. We remanded the cause to the trial court with instructions to enter a judgment of conviction for robbery as a Class C felony[3] and to sentence accordingly.

In sentencing Bell on remand, the trial court identified the same two aggravating circumstances it identified the first time it sentenced Bell, i.e., his "prior criminal history consisting of [twenty-eight] prior convictions, including [six][4] prior felony convictions" and the fact that Bell was on probation when he committed the instant offense. Tr. p. 14-15; Appellant's App. p. 131-32. The trial court also found three mitigating factors: (1) Bell adapted well to the prison environment; (2) Bell had not had any write-ups while in prison; and (3) Bell had been "involved in civil, civic service as well as educational undertakings to better himself" while in prison. Tr. p. 14. The trial court concluded that

[3] I.C. § 35-42-5-1.

[4] *See supra* note 2.

the aggravating circumstances outweigh the mitigating circumstances and sentenced Bell to a prison term of eight years, the maximum sentence for a Class C felony. *See* Ind. Code § 35-50-2-6. Bell now appeals.

Discussion and Decision

On appeal, Bell contends that his eight-year sentence is inappropriate in light of the nature of his offense and his character. Indiana Rule of Appellate Procedure 7(B) states: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*. The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Bell's sentence is inappropriate.

As to the nature of Bell's offense, the facts of the robbery are not particularly egregious. Bell's character, on the other hand, is a different story. He has compiled a stunning criminal history, with six felonies highlighting a total of twenty-eight prior adult convictions, along with several prior probation violations. *See* Appellant's App. p. 84. Furthermore, a review of Bell's pre-sentence investigation report reveals significant

criminal activity related to the current robbery charge. Specifically, his current Class C felony robbery conviction was preceded by convictions for theft, a Class D felony, in 1993, 2001, and 2005. Bell's collection of convictions is disturbing for two reasons. First, it demonstrates a pattern of disrespect for the law on Bell's part. Despite numerous, repeated encounters with law enforcement, Bell continued his life of crime. Second, Bell's crimes are increasing in seriousness, capped off by his most serious crime to date. When it viewed Bell's criminal history alongside the fact that Bell was on probation when he committed the instant offense, the trial court rightly found that the aggravating circumstances outweigh the three mitigating circumstances relating to Bell's behavior while in prison.

Still, Bell argues that his eight-year sentence is inappropriate because it is the maximum sentence for a Class C felony. He stresses that at his first sentencing hearing, the trial court stated that the maximum sentence of twenty years for a Class B felony was not appropriate because the maximum sentence "is to be reserved for the most heinous of the circumstances and characteristics of an individual" and Bell's offense does not rise to that level. *Id*. at 137-38. Bell's argument is not completely unattractive. However, the Indiana Supreme Court has made clear that Appellate Rule 7(B) authorizes *independent* appellate review of sentences imposed by trial courts. *See Buchanan v. State*, 767 N.E.2d 967, 972 (Ind. 2002). Bell asks us to base our review of his sentence on the trial court's comments concerning the appropriateness of the maximum sentence at the initial sentencing hearing in this cause. While we will certainly consider such comments, our ultimate task is to measure the appropriateness of a sentence "in light of the nature of the

offense and the character of the offender." Ind. Appellate Rule 7(B). Given Bell's extensive criminal history, we cannot say that his sentence is inappropriate.

Likewise, the fact that the trial court found mitigating circumstances in resentencing Bell, whereas it found none in sentencing Bell the first time, does not change our conclusion. The mere existence of mitigating factors does not make the maximum sentence inappropriate. The trial court engaged in a balancing process and determined that the aggravators outweigh the mitigators, and Bell does not challenge the aggravators or mitigators or the weight assigned to them by the trial court. Bell has failed to persuade us that his sentence is inappropriate.

Affirmed.

BAILEY, J., and BARNES, J., concur.